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TO	Reply Brief Commissioner for Patents	FAX NO. VOICE NO.	571.273.8300 571.272.7081

MESSAGE

Please direct this facsimile to Reply Brief. This facsimile concerns the following patent application:

Serial No.	09/768,665
Applicant:	Nguyen, et al.
Filed:	January 24, 2001
Invention:	System and Method for the Handling of System Management Interrupts in a Multiprocessor Computer System

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PATENT APPLICATION
USSN 09/768,665

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES**

In re application of:	§	
	§	
Nguyen et al.	§	
	§	
Serial No.: 09/768,665	§	Group No.: 2111
	§	
Filed: January 24, 2001	§	Examiner: Khanh Dang
	§	
For: System and Method for the Handling of System Management Interrupts in a Multiprocessor Computer System	§	

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

Appellants respectfully submit this Reply Brief under 37 C.F.R. § 41.41(a)(1) in response to the Examiner's Answer mailed November 23, 2007 ("Examiner's Answer"). Appellants maintain that the final rejections of Claims are improper and respond to the Examiner's Answer below.

Argument

In response to the Examiner's arguments in the Examiner's Answer, Appellants present the following.

I. Appellants' Reply to Examiner's Response to Arguments

Appellants have reviewed the Examiner's Answer of 11/23/07 in its entirety. Rather than respond to each individual assertion made by the Examiner in this latest round of correspondence, Appellants elect to respond simply to some of the more significant contentions from the Examiner. As the Examiner has repeated the grounds of rejection from the Final Office action of 12/27/2006, Appellants will be primarily addressing the Examiner's comments in the Response to Arguments section.

Claims 1, 4-8, 16, and 19-23 were rejected by the Examiner under 35 U.S.C. §103(a) as being obvious over Applicants' allegedly admitted prior art in view of U.S. Patent 6,282,601 issued to Goodman et al. ("Goodman"), and further in view of U.S. Patent 3,643,227 to Smith et al. ("Smith"). Appellants respectfully disagree and submit that a *prima facie* obviousness rejection has not been established. Appellants contend that the combination of Applicants' allegedly admitted prior art, Goodman, and Smith is improper and that it does not teach or suggest all of the elements of Appellants' independent claims.

A. Failure to Establish a *Prima Facie* Rejection - Improper Combination with Goodman

Appellants would like to reiterate that, in this case, the combination of references relied upon by the Examiner is improper due to Goodman. Appellants emphasize that Goodman must be considered in its entirety. It is well established that a prior art reference must be considered in its entirety, including those portions that point to the nonobviousness of the

invention at issue. The relevant section of the MPEP, 2141.02, states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." (emphasis in original). This section of the MPEP includes a detailed discussion of the *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550-51 (Fed. Cir. 1983) case, and the fact that the reference discussed in that case, when read as a whole, would not suggest the claimed invention. In *In re Hedges*, 783 F.2d 1038 (Fed. Cir. 1986), the Federal Circuit plainly stated that "the prior art as a whole must be considered." *Id.* at 1041. "[I]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965).

Here, when considering the teachings of Goodman as a whole, a person of ordinary skill would be encouraged to use only a single, dedicated processor as the processor responsible for handling a system management interrupt, in *direct contrast* to the claims of the present invention, which require that each processor is operable to handle a system management interrupt. **This contrast is "strong evidence" of the nonobviousness of the invention.** "[M]atter in the prior art which counsels against doing what the inventor did is strong evidence that the inventor's solution is not obvious." *Johnson & Son, Inc. v. Gillette Co.*, 1989 WL 87374, *42, Civ. A. Nos. 83-2657-N, 83-3201-N, (D. Mass. 1989).

The Examiner argues that Goodman provides a solution to the problem of interrupt timing constraints in a multi-processor system, and thus, Goodman does not teach away from the Appellant's invention. (Examiner's Answer, p.13) Even if Goodman solved the problem that the Examiner states, which Appellants do not concede, Goodman teaches a

fundamentally different approach to solving this problem than that of the present invention -- namely, Goodman uses a single, dedicated processor. This approach teaches away from the present invention.

In fact, the Examiner agrees that Goodman discloses dedicating a boot processor to handle an interrupt. (Examiner's Answer, p.10) However, the Examiner has decided to ignore certain aspects taught by Goodman in order to pick and choose only the parts of Goodman to support his position that Goodman does not teach away from the present invention. Specifically, the Examiner states that Goodman is relied upon in the 103 rejection for the disclosure of an interrupt handling method in a multiprocessor environment. (Examiner's Answer, p.11) The Examiner explicitly states that **Goodman is NOT relied upon** in the 103 rejection for the teaching of a single, dedicated processor as the processor responsible for handling a system management interrupt. (Examiner's Answer, p.12) It is clear, then, that (a) the Examiner agrees that Goodman does teach a single, dedicated boot processor, and also (b) the Examiner is choosing not to rely upon this teaching of Goodman. This is a clear admission on the part of the Examiner that the Examiner is not considering the Goodman reference as a whole, thus not complying with the requirements of the MPEP (at least section 2141.02) and the applicable Federal Circuit case law cited above. The Examiner is not following the requirements of the MPEP, and thus, the 103 rejection cannot stand and, for this reason alone, must be reversed.

The Examiner states that Appellants have not provided any evidence or argument to show that Goodman cannot be used in the allegedly admitted prior art. (Examiner's Answer, p.13) Appellants remind the Examiner that the MPEP states, "The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness," and, "If the examiner

does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." (MPEP 2142) The Examiner has failed to establish a *prima facie* case of obviousness due to the improper combination with Goodman. Thus, Appellants need not submit evidence that Goodman could not be combined with the other references cited.

Appellants submit that Goodman must be considered in its entirety, and, when Goodman is considered in its entirety, Goodman teaches away from the claimed invention. As a result, a rejection of the pending claims on the basis of any combination involving Goodman is improper, and for this reason alone, a *prima facie* case of obviousness has not been established.

B. Failure to Establish a *Prima Facie* Rejection - All Claim Limitations are not Taught or Suggested

Goodman, taken alone or in combination with Smith and Applicants' allegedly admitted prior art, does not teach or suggest all of the claim limitations of the present invention. Namely, because Goodman teaches a single, dedicated processor responsible for handling a system management interrupt, Goodman fails to teach or suggest that each processor of the multiple processors is operable to process a system management interrupt and none of the processors are dedicated to processing system management interrupts. Additionally, Applicants' allegedly admitted prior art fails to remedy this deficiency, as the cited portions of the Background of Appellants' Specification discuss how, in a multi-processor system, a second processor may be *unable* to properly process a system management interrupt. (Specification, p.4, lines 18-22) Finally, Smith also fails to remedy the deficiencies of Goodman and Applicants' allegedly admitted prior art, as Smith fails to even discuss system interrupts. **Because each of Goodman, Smith, and the allegedly admitted prior art fails to teach or suggest the required claim elements, the combination also fails to teach or suggest these**

elements. Additionally, as Appellants have noted earlier, it is the Examiner's burden to show that this combination establishes a *prima facie* case of obviousness. Appellants fail to see, without further elaboration from the Examiner in constructing a *prima facie* case of obviousness, how the combination of Goodman, Smith, and the allegedly admitted prior art could teach or suggest an element that **none of them teach individually**. Because the combination of references fails to teach or suggest all of the claim limitations of the present invention, a *prima facie* case of obviousness has not been established.

As a *prima facie* obviousness rejection has not been established against Appellants' independent claims, Appellants respectfully request allowance of independent claims 1, 16, and 22. Additionally, because pending claims 4-8, 19-21, and 23 depend from these independent claims, Appellants respectfully request allowance of all pending claims.

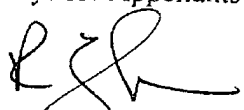
CONCLUSION

Appellants have demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellants respectfully request the Board to reverse the final rejections and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

Appellants believe that no filing fee is due for this Reply Brief; however, the Commissioner is hereby authorized to charge any fees or credits to Deposit Account No. 02-0383 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Appellants



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